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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 23rd MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 19 August 1992, at 3 p.m.

Chairman: Mr. ALFONSO MARTINEZ

later: Mr. CHERNICHENKO

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INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1992/25 and Add.1; E/CN.4/Sub.2/1992/NGO/11; E/CN.4/Sub.2/1991/30 and Add.1-4)

1. Mr. IBARRA (International Indian Treaty Council) said that a state of war had existed between the Government of Sri Lanka and the Tamils since 1983 and that, throughout that period, the Sri Lankan national army had continued to oppress and terrorize the Tamil people. In Trincomalee, for example, detention, ill-treatment, torture and violations of human rights and fundamental freedoms were everyday occurrences and since 1990 in some areas more than one quarter of Tamil young people had been detained.

2. The International Indian Treaty Council requested the Sub-Commission to appeal urgently to the Sri Lankan authorities to free all prisoners and to end its policy of colonizing Tamil territory. The Sub-Commission should also appeal to the parties to the conflict to start negotiations.

3. His organization also asked the Sub-Commission to concern itself with the situation of several indigenous leaders imprisoned in the United States of America. It appealed once more for the freeing of Leonard Peltier, leader of the American Indigenous Movement and the International Indian Treaty Council, who had spent the past 17 years in prison for a crime for which there was no evidence that he had been the author; moreover Leonard Peltier had been extradited from Canada to the United States on the basis of false testimony. His organization considered that the Sub-Commission should invite the competent authorities to free Leonard Peltier unconditionally.

4. The International Indian Treaty Council was seriously concerned at the human rights situation in Guatemala and, in that connection, wished to refer to the case of army Corporal Nicolas Gutierrez Cruz who had been arrested as the presumed perpetrator of a massacre and condemned to death. His organization considered that the death penalty inflicted on Corporal Cruz had been designed as a cover-up to provide immunity for the army officers and political authorities who ordered, planned and carried out the massacres which were a regular occurrence in Guatemala. Everything indicated that

Corporal Cruz had indeed participated in the massacre but only a fair trial by impartial authorities could have established the degree of his responsibility.

5. The International Indian Treaty Council opposed the death penalty on moral grounds and therefore requested the Guatemalan authorities to commute it in the case of Corporal Cruz. It also urged the Guatemalan authorities, as also had resolutions of the General Assembly, the Commission on Human Rights and the Sub-Commission, to derogate the laws on impunity and to put on trial and punish those responsible for violations of human rights and fundamental freedoms.

6. Corporal Cruz had very probably been one of the perpetrators of one of the many massacres which had taken place in Guatemala and the fact that one of those responsible had been punished was a positive development. The perpetrators of other massacres however remained free. For example, six army officers for whom the Public Prosecutor had requested 30 years' imprisonment on the basis of incontrovertible evidence, had been acquitted by an army tribunal on grounds of lack of evidence.

7. Mr. NAZIRI (International Falcon Movement) said that his organization had been particularly concerned by numerous reports to the effect that, in Iran, young children of political opponents of the regime were being tortured in the presence of their mother or were forced to watch her being tortured. The Commission on Human Rights Special Rapporteur, Mr. Galindo Pohl, had indeed cited cases of torture and ill-treatment in that country. What was of special concern was that the Iranian authorities had legalized such crimes, including torture, which, according to the President of the Supreme Court, could be used to extract information important to national security. Such crimes were even being perpetrated in public and in recent months there had been a wave of arbitrary arrests, particularly of women, who had then been publicly flogged on the grounds that they were not complying with the dress code. In Machad alone, 3,000 persons had been arrested following an anti-government demonstration.

8. The judicial system of the current regime had become a highly effective tool for the violation of human rights and the legalization of executions and torture. It specialized in providing legal justification for savage and medieval repression in the guise of religion. The Mujahidin had been branded as enemies of God, the penalties for which included death by decapitation, stoning, burial alive or double amputation. The criminal code listed different methods of crucifixion.

9. What was happening in Iran went beyond human understanding. Repression had achieved a vast social dimension; the whole country had become a torture chamber and the entire population were prisoners. The situation called for serious action by all defenders of human rights; the Sub-Commission must adopt a strong resolution clearly condemning those practices.

10. Ms. SAV (Observer for Turkey) said that, in its intervention under item 10, the representative of Pax Christi International had made some allegations against her country. Those allegations were so irrelevant to the real situation in Turkey that her delegation would refrain from replying to them.

11. Turning to item 11, she said that the Special Rapporteur, Mr. Joinet, was to be congratulated on his report (E/CN.4/Sub.2/1992/25) which, however, contained outdated and misleading information concerning Turkey.

12. The Union of Turkish Bar Associations was a completely independent establishment of civil society, outside the hierarchy of the central State. It not only defended effectively the interests of its members in the exercise of their profession but also played a leading role in the safeguarding of the rule of law and its enhancement. It closely controlled the operation of the judiciary as well as contributing substantially to the elaboration of new legislation. If the information provided for the report had been verified through the Union of Turkish Bar Associations the use of second-hand information would have been avoided. The Human Rights Association in Turkey was far from being the only organization which defended the rule of law and respect for human rights.

13. There were a number of mistakes in the report. In the first place, it was worth considering whether all the lawyers mentioned had been put under pressure due to and during their legal practice or not. It was a cardinal principle that no lawyer could be prosecuted for activities carried out as a part of the performance of professional functions. That principle did not however mean that, if a lawyer violated rules, he or she would not be subjected to the normal juridical procedure. That had been true in the cases of Murat Demir, Bedii Yarayici and Ayhan Aksözek. Mr. Aydar had been elected to be a member of Parliament representing the political party HEP in the general elections of October 1991.

14. It should also be noted that international legal control mechanisms, such as the Council of Europe and the United Nations, were open to all Turkish citizens once domestic remedies had been exhausted.

15. In April 1992 the Turkish Government had submitted to Parliament a comprehensive legislative reform programme drafted with the active participation of members of bar associations, human rights associations and other concerned non-governmental organizations which Parliament had adopted on 21 May 1992. Mr. Joinet's report had failed to reflect aspects of that package which were directly linked to the independence and impartiality of the judiciary and the independent practice of lawyers.

16. The reform package incorporated amendments to four essential Turkish codes, namely: the Code of Criminal Procedure; the Code on the Establishment and Procedure of State Security Courts; the Code on Police Duties and Powers; and the Anti-Terror Code. Provisions of the reform package which were relevant to the agenda item included: the shortening of detention periods in line with commonly accepted standards so that the maximum period for police custody for individual crimes would be 24 hours. In crimes committed by three or more persons that period might be prolonged up to four or eight days at the request of the Public Prosecutor. In addition to the Public Prosecutor and the defendant, the intervenors would be entitled to raise a motion for the disqualification of the judges. Previous legislation regulating lawyer-defendant relationships had been further stregthened through an amendment to article 135 of the Code of Criminal Procedure which stipulated that the defendant must be notified of his rights and had the right to have

access to a lawyer from the start of his interrogation. Pursuant to an amendment to article 144 of the Code of Criminal Procedure, the defendant had the right to meet in private with his lawyer during every stage of his interrogation and to communicate with him freely. An amendment to article 146 of the same Code provided that the Bar Association would assign a lawyer for the defence of the defendant if the latter did not have the financial means to hire one.

17. In conclusion, she would like to stress that in Turkey lawyers carried out the profession of providing defence counsel and that, even during the extraordinary conditions of the military intervention of 12 September 1980, no lawyer had stopped exercising his profession and no individual had been left defenceless. The current atmosphere in Turkey was much more conducive than that of 1980 to the free practice of law by Turkish lawyers.

18. Mr. FAN Guoxiang (Observer for China) said that the basic task of China's judicial work was to protect the basic rights, freedoms and other legal rights and interests of the whole people in accordance with law, to protect public property and the lawfully-owned private property of citizens, to punish the small number of criminals according to law, to maintain social order and to guarantee the smooth progress of the modernization drive.

19. The procuratorate and the courts in China exercised their authority independently of any administrative organ, social organization or person. The National People's Congress was the highest organ of State power. The presidents of people's courts and the chief procurators at various levels were elected by the local people's congresses. Other judges and procurators were appointed and removed by the standing committees of the people's congresses at the corresponding levels. In dealing with criminal cases, the people's court, the people's procuratorate and the public security organ divided their work according to law with each exercising its authority only within the scope of its own responsibilities. Judicial organs were required to abide by the principles of equality before the law on the basis of the facts.

20. In recent years because of rapid economic development, China's judicial organs, while continuing to deal with criminal cases in order to maintain social order, had devoted more of their energy to handling economic cases. In 1991, China's courts at all levels had adjudicated 587,000 economic disputes and had also dealt with a great number of civil cases, thus protecting the democratic rights of the people.

21. China's basic goals in criminal reform were to turn the offender into a different kind of person, one who abided by the law and supported himself by his own work, and to reinsert him in society as a free citizen.

22. In the actual practice of criminal reform, China paid close attention to the principle of humanitarianism. Chinese law therefore stipulated the following civil rights for a criminal during a prison term: to appeal, to defence during legal proceedings, to protection against assault on human dignity or personal safety, to make reasonable suggestions concerning the prison management, to lead a normal life and maintain good health, to education, to religious belief and certain civil rights including property and

inheritance rights. The people's procuratorate had permanent teams in prisons while deputies of the people's congresses at all levels visited the prisons from time to time to check on law enforcement there.

23. Criminals were required to do productive and socially beneficial work which was designed to help them overcome bad habits and to accustom them to work and to develop a sense of social responsibility and respect for the law. Some criminals had become engineers, factory directors and managers after serving their sentences.

24. For many years China's rate of recidivism had been between 6 and 8 per cent. China had successfully reformed the majority of its criminals, including the last feudal emperor and various war criminals and had turned them into socially beneficial law abiding citizens. That had helped to safeguard the country's social stability, economic development and national security while at the same time effectively protecting the rights and interests of Chinese citizens.

25. With an accelerating rate of reform, opening up to the outside world and rapid economic development, China's legal and judicial work would face new challenges and would require further improvement. China was willing to exchange views and experiences with other countries.

26. Mrs. GALVIS (Observer for Colombia) said that her Government considered that the proper administration of justice was the basic condition for the enjoyment of human rights and for the strengthening of democracy. It was for that reason that the last two administrations had tackled the problem as a matter of priority in the process of institutional reform which had been taking place since the promulgation of the new Constitution.

27. New institutions to guarantee the autonomy of the judicial branch and combat impunity had included the Superior Council of the Judiciary, the Office of the Public Prosecutor and special jurisdictions such as those for indigenous persons and the justices of the peace. The latter institutions would help to remedy the congestion in the legal system by taking over responsibility for indig- ous and minor cases.

28. The approach of the Colombian criminal investigative system had been changed from inquisitorial to accusatory and the change would make it possible to rationalize the investigatory process by unifying the functions of the Judicial Police and by concentrating the responsibility for directing, coordinating and implementing the investigative process in the new Office of the Public Prosecutor of the Nation. The accusatory system would accordingly make it possible to give greater coherence to the criminal investigatory process and the Government hoped that such coherence would make it possible to combat impunity.

29. The problem of justice in Colombia was of concern to all because the strengthening of demccracy depended largely on the consolidation of a system of justice capable of bringing to account and punishing those responsible not only for violations of human rights but above all for the investigation and punishment of crimes committed throughout the country.

30. She hoped that the international community would understand that her country was constructing a state of law based on the struggle against impunity.

31. Mr. Chernichenko took the Chair.

32. Mr. ZEWDIE (Observer for Ethiopia) said that his country had been mentioned twice in the report of the Special Rapporteur on states of emergency (E/CN.4/Sub.2/1992/23). On page 10 it had been stated that the state of emergency imposed by the former regime had been terminated in May 1991 while the curfew, which had been introduced in May 1991, continued to exist. The Special Rapporteur had also expressed regret, on page 32, at the lack of information from the Government regarding the de facto state of emergency mentioned in his fourth annual report.

33. As the Special Rapporteur had pointed out, the state of emergency imposed by the previous regime in the two regions indicated in the report had been terminated immediately by the new Government. Since the change of Government there had been neither a state of emergency nor a situation which resembled it.

34. The curfew had been lifted since 31 May 1992. It had been imposed by the previous Government 17 years earlier and had seriously curtailed the right of Ethiopians to move freely in their own country. Those who broke the curfew, even for reasons beyond their control, had been harshly treated by means of severe beatings and detention without any legal charge.

35. Thanks to the Charter of the Transition Period, which had fully restored their basic rights and freedoms, all Ethiopians currently had the right, without restriction of any sort, to travel wherever they wished. In the view of his delegation, the lifting of the curfew was further testimony to the existence of peace and stability in the country at large.

36. His delegation believed that the reported failure of the Government to provide requested information had been due to technical reasons. His delegation wished to reiterate once again the Government's willingness and readiness to cooperate fully with the Sub-Commission. As the Special Rapporteur had noted, there was a genuine atmosphere of cooperation in the area of human rights between the Transitional Government and non-governmental organizations. He wished to assure the Sub-Commission that the Transitional Government would do its best to improve further that very encouraging atmosphere of cooperation.

37. Mr. GANAPATHY (Observer for Malaysia), referring to the statement made by Mr. di Tiro the previous day, said that his delegation hoped to clarify the circumstances regarding the so-called Achehnese refugees.

38. Rapid economic growth in Malaysia had led to labour shortages which had encouraged foreign workers from neighbouring countries to enter the country illegally. Those who had come to Malaysia illegally had not done so because of repression, persecution or genocide but because they hoped to seek better economic opportunities in Malaysia. The illegal immigrants had soon moved into petty trading activities and had deprived numerous Malaysians of their livelihood through menacing behaviour and physical violence so that eventually the situation had threatened to get out of hand and endanger the

socio-economic and political stability of the country. The Government of Malaysia had accordingly launched a campaign to register all foreigners who were working illegally in the country without papers and permits and had set a deadline of 30 June 1992 after which those who had failed to register would be liable to arrest and deportation. The Achehnese were economic migrants and therefore illegal immigrants subject to arrest and treatment according to existing laws and regulations.

39. As the deadline approached, a group of 43 Achehnese had decided to camp in the premises of UNHCR and had subsequently demanded recognition as refugees and refoulement. Their action had been clearly motivated by their desire to elude arrest and deportation and had been instigated and carefully monitored by Achehnese in Europe.

40. As a close neighbour of Indonesia, Malaysia had not seen any evidence of repression or genocide as claimed by Mr. di Tiro. On the contrary, Malaysia had noted the active involvement of the Indonesian Government in the further development of Acheh. Moreover, the Government of Indonesia had given assurances of non-persecution and respect for returnees.

41. In regard to allegations of ill-treatment of detainees, he wished to assure the Sub-Commission that those detained had been provided with all the necessary facilities, including adequate food, shelter and medical treatment. Malaysia had been very hospitable to refugees, including the Vietnamese boat-people of whom more than 11,000 remained in Malaysia.

42. In conclusion, his delegation had been surprised to note the use by Mr. di Tiro of United Nations stationery to disseminate his statement. It would like to know what circumstances had led to that action which clearly impinged upon the integrity of the United Nations Office at Geneva.

43. Ms. GABR (Observer for Egypt), speaking on a point of clarification, said that exceptional circumstances had prompted her Government to resort to the application of the Emergency Act following the events of 6 October 1981. The events which had led to that situation had been acts of violence which Egypt had not experienced before as Egyptian society had been known throughout history as one in which individuals were safe in their own homes in the belief that the State authority would respect basic laws. The application of the Act had been consistent with universally recognized legal principles in a critical situation which would normally be described as exceptional circumstances.

44. Her Government had applied the Act in only two types of case, namely: cases of terrorist activity and cases involving illicit drug trafficking and even then had applied it in a restricted manner. The Act stipulated that detainees had the right to a fair trial before a competent court and must be informed in writing of the reasons for their arrest; they also had the right to submit an official complaint within 30 days from the date of arrest.

45. The Egyptian authorities had been considering suspending implementation of the Emergency Act but acts of violence, including the assassination of Dr. Rifaat al-Mahgoub, Speaker of the People's Assembly and threats made by terrorist groups against leading personalities and lay intellectuals had prevented that. Most recently the assassination of Professor Farag Khouda, in

addition to threats to the security and lives of citizens and their property in some villages in Upper Egypt, had induced her Government to continue to implement the Act albeit in accordance with strict controls and on a restricted basis.

46. Even assuming that there might have been some individual and exceptional cases of abuses, possibly including torture, during the application of the Emergency Act, her Government could nevertheless confirm that, under Egyptian law, torture was a criminal offence and its perpetrators would be brought to justice.

47. In its endeavours to ensure justice and the fundamental freedoms of its citizens, the Egyptian Government had been one of the first to accede to the Convention against Torture in June 1986 and accordingly that Convention had become an integral part of Egyptian legislation and thus binding on all official institutions.

48. Ms. HASSEN (Observer for Algeria) said that the statement on behalf of the International Association of Democratic Lawyers concerning the trial of the leaders of the former Islamic Salvation Front had included accusations which, although they lacked any basis, might cast doubt on the evolution of the democratic process in Algeria. It had contained inter alia, references to a virtual civil war, a hypocritical military coup d'état which had deposed former President Chadli, fake trials and violations of the rights of the defence.

49. In reply she wished to say that Algeria was not in a state of virtual civil war. The public authorities, with the support of the population, was facing crimes and sabotage by small terrorist groups, partly trained abroad, which were attempting to spread violence and, by well-targeted attacks against State institutions and the forces of order, were attempting to encourage a military coup; the military coup d'état referred to by the International Association of Democratic Lawyers existed only in the organization's imagination.

50. The events of January 1992 did not constitute a military coup d'état. President Chadli Bendjedid had resigned voluntarily; he had made a statement which had been broadcast by all the media explaining his action; and he was continuing to live in Algeria enjoying his full rights as a citizen: that would not have been likely if he had been deposed. She also recalled the indignation of the population at the assassination of President Mohammed Boudiaf; the Government of the day had not been reorganized and the High Committee of State, which had been established at that time in order to fill a constitutional lacuna, had undertaken to end its mission in December 1993 at the latest, which was the date when the mandate of President Chadli would have expired. Earlier commitments regarding the continuation of the democratic process had been strongly reaffirmed.

51. Concerning the trial of the leaders of the former Islamic Salvation Front, international bodies could not be regarded as forums for recourse while internal institutions continued to function freely and transparently, in conformity with the law and just, honest and democratic procedures. Most

observers had agreed that the trial of the leaders of the former Islamic Salvation Front had been carried out in conditions conducive to the elucidation of the truth and the rights of the defence had been fully respected, if not always exercised. The fact that there had been a trial, that it had not been held in camera, that the witnesses requested by the defence had been called, and the clemency of the court when compared with the serious nature of the charges also demonstrated how grotesque the charge of mock trial had been.

52. The internment centres to which reference had been made had been reserved exclusively for those guilty of violent crimes; from the beginning they had been managed in a transparent manner; family members could visit prisoners, humanitarian organizations, including the International Committee of the Red Cross, inspected them regularly. The centres had been closed one-by-one as the inmates had been freed.

53. The representative of the International Association of Democratic Lawyers had spoken of a political trial but the accusations brought by the public authorities had been proved. The same representative had expressed the hope that a political solution for Algeria's problems would be found which would guarantee respect for human rights. That was the very purpose of the activities of the High Committee of State.

54. Mr. Alfonso Martinez resumed the Chair.

55. Mr. CHAKRAVARTI (Observer for India) said that he wished to set the record straight in respect of unfounded allegations made against the judicial system of his country.

56. Respect for the rule of law, the right to life and an independent judicial process were ingrained in India through long usage in a democratic political culture. Judicial review remained a cornerstone of that process by providing relief without fear or favour. That concern extended equally to circumstances in which terrorism, externally supported, had sought deliberately to destroy the democratic process with a callous disregard for the right to life of ordinary citizens who wished to get on with living their lives away from fundamentalist diktats and death threats which poisoned their daily existence.

57. The fundamental threat to the rule of law was the terrorist whose demonic cause thrived at its expense. Those who had made baseless allegations which they had called "well-documented" were perhaps privy to terrorist methods of disinformation by which terrorists had threatened and killed journalists and even newspaper vendors who sold newspapers which did not carry items dictated by terrorist organizations.

58. There was nothing to be learned from those who made such catch-all allegations so cynically except the methods of manipulation used by the terrorists whose cause they espoused.

59. Mr. YOSHIHARA (Observer for Japan), speaking in response to statements made by the International Association of Democratic Lawyers and International Educational Development with regard to the so-called substituted prison

system, said that all arrests or detentions in Japan were carried out under strict judicial control which was completely independent of the Government. All detentions, without exception, were made following a warrant of detention issued by a judge who must hear the suspect's statement and would decide to keep him under detention only when there were reasonable grounds for doing so. It was also the judge who decided on the place of detention after considering its institutional capacity, the distance between the detaining institution and the investigative institution and the convenience of the suspect. Anyone not satisfied with the ruling of the judge had the right to file a complaint with a superior court requesting revocation or change of the ruling. The maximum period of detention was 10 days but the public prosecutor was permitted to apply for an extension for a further 10 days but such application would be accepted only if the judge deemed that there were unavoidable circumstances for doing so. If prosecution had not been instituted within that period, the public prosecutor must release the suspect. When a defence counsel requested an interview with the client, it was arranged as soon as possible.

60. In Japan there were ample statutory safeguards against torture and other infringements of the rights of suspects by public officials in the course of criminal investigations. There was also a safeguard against the abuse of public authority in matters of evidence. The Code of Criminal Procedure stipulated that a confession which was suspected not to have been made voluntarily should not be admitted in evidence. Such legal safeguards were fully respected by public prosecutors and police officers. Moreover, the officer who dealt with inmates in police custodial facilities worked for a department different from that of the person in charge of criminal investigations and an investigator was prohibited from being in charge of prisoners. The new bill on police custodial facility was designed to contribute to a greater guarantee of the rights of detainees in such facilities.

61. War Amputations of Canada had referred to claims of ex-prisoners of war and internees during the Second World War. In the view of his Government the San Francisco Peace Treaty concluded by Japan in 1952 with the Allied Powers, including Canada, had stipulated that the Allied Powers had waived all reparations claims of the Allied Powers and of their nationals arising out of any actions taken by Japan and its nationals in the course of the of the war. He would like to reiterate that the position of Japan on the procedural aspect of the issue, especially with regard to the 1503 procedure, coincided with Sub-Commission decision 1991/104, which his delegation supported.

62. In conclusion, concerning the statement made by the International Association Against Torture, which had referred to the so-called "comfort women", the view of his delegation was the same as that stated in its statement under item 16.

63. Mr. MALEK (Observer for Tunisia) said that the World Organization Against Torture had referred to the dissolution of the Tunisian Human Rights League. In that connection he would like to recall that his delegation, under item 17, had taken the opportunity, to provide the necessary clarifications on the

subject of the right of association in Tunisia and to make appropriate comments regarding the situation of the Tunisian Human Rights League which had led to its dissolution by law.

64. Mr. BENHIMA (Observer for Morocco) noted that, in its publication No. 16 dated April 1992, the International Service for Human Rights had criticized his delegation for an allegedly undiplomatic attack on NGOs. His delegation regretted that a number of NGOs continued to engage in verbal violence, the deliberate falsification of facts as well as the systematic concealment of significant progress made by Governments. He therefore urged such NGOs to monitor the accuracy of the reports they received.

65. In reply to allegations made by Centre Europe-Tiers Monde, he would like to say that that organization must clearly not be aware of five reports by the Secretary-General issued between 18 June 1990 and 29 May 1992 regarding the settlement process in the Sahara. None of those reports had mentioned Morocco as having been responsible for the alleged delay in the implementation of the settlement plan. A number of problems inherent in the complexity of the question, particularly those linked to the criteria for identifying the inhabitants of the Sahara, had raised difficulties once the process had started. A number of criteria established by the former Secretary-General of the United Nations, which had not been entirely satisfactory but had been accepted by Morocco, had been rejected by members of Polisario. In that connection, Mr. Boutros-Ghali had announced his determination to respect the commitments made by his predecessor and to implement the criteria which had been established.

66. Concerning the accusation that his country had denied the right to self-determination of the Saharan population, he recalled that, on 20 August 1991, King Hassan II had reaffirmed the commitment of Morocco to the United Nations peace plan, both in content and in philosophy. The previous day the Minister of Foreign Affairs and Cooperation of Morocco had stated that the referendum should take place as quickly as possible.

67. With regard to allegations that between 800 and 900 Saharans had disappeared, the Working Group on Disappearances had concluded that the number was closer to 200. In the list provided by the Working Group a number of names had been duplicated because of different spellings.

68. The representative of Centre Europe-Tiers Monde had testified that several persons reported disappeared in Morocco had been found by a miracle in the Tindouf camps. The Permanent Mission of Morocco had provided the Working Group with the comments of the competent Moroccan authorities on the results of the investigation which had been made in that connection.

69. He hoped that in future allegations would be rigorously verified and that reports would contain information indispensable to the inquiry, particularly when they emanated from an association known as AFAPREDESA, which was linked to and used by Polisario for political ends.

70. Ms. WIJONO (Observer for Indonesia) said that her delegation had strong objections to the abusive language used by a previous speaker in referring to "Javanese Indonesia", which was not only insulting to her country but

represented an improper departure from official United Nations nomenclature. Her delegation therefore requested that such language should be deleted from the official record.

71. Concerning the issue raised by the speaker in question, the Sub-Commission must by now have become accustomed to the unfounded allegations levelled against Indonesia with particular reference to the situation in Acheh. Ever since the outbreak of violence in the eastern part of Acheh in 1989 a European-based separatist group had tried unsuccessfully to take advantage of the security disturbances that had taken place between the end of 1989 and early 1990. As her delegation had repeatedly stated, the security disturbances in eastern Acheh had been criminal in nature and atrocities had taken the form of ambushes of public transportation, the burning of villages, houses and educational establishments and the killing of innocent civilians, including the employees of local plantations. Measures against those who had been disrupting security and public order had been taken and the trials of 32 of those who had been found guilty had been completed; relevant details had been contained in her delegation's official reply to communications on the matter. Since 1991 the situation in Acheh had returned to normal.

72. The same speaker had also referred to the presence of a number of Achehnese in neighbouring Malaysia, allegedly as the result of an exodus of Achehnese following the security disturbances. The allegation was groundless. A few had perhaps crossed the border, driven by their own fear because of involvement in criminal activities. It should be noted that in Malaysia there were a number of migrant workers from various parts of Indonesia, including from the province of Acheh, and it was within the sovereign right of the Government of Malaysia to take the necessary action to determine the true status of those who were seeking better economic opportunities. Indonesia appreciated the generosity of the Government of Malaysia in hosting Indonesian migrant workers but had itself cooperated by receiving its citizens who had been deported because they did not have proper documentation or had been classified as illegal immigrants. As early as May 1991, the Governor of Acheh had welcomed the return of 100 villagers from Malaysia and had extended the necessary facilities to ensure their safe arrival in their original villages and to continue with their lives.

73. Mr. ILIOPOULOS (Observer for Greece), in reply to the International Abolitionist Federation, said that the incident which had been referred to had come within the scope of an inquiry requested by the Attorney-General following the deposition of the relevant complaint by one of the arrested youths. According to the conclusions of the inquiry, the 33 youths had been arrested for refusing control of identity cards and swearing at and resisting the police. During their detention at the police station they had received numerous visits from relatives, friends, parliamentarians and lawyers to whom they had not complained at any point of ill-treatment on the part of the police. The incident in which the women detainees had allegedly been obliged to remove their clothes in front of police officers had not been confirmed in any way. Nor had there been confirmation of any other complaint about insults to the person of those arrested during the period of their detention at the police station.

74. With regard to Mrs. María Nicolaedu, at her own request, she had been examined by independent physicians at three different hospitals where no signs of ill-treatment had been found. Neither had medical examinations of other members of the same group revealed any signs of ill-treatment.

75. In conclusion, it should be mentioned that Mrs. Nicolaedu and her colleagues had approached the press and made their complaints of ill-treatment three entire days after the alleged incident had taken place.

76. Mr. KHAN (Observer for Pakistan) said that references had been made to the judicial system and to the promulgation of ordinances in his country. In order to clarify any ambiguities, he wished to present the factual position.

77. The Constitution of Pakistan could only be amended by a two-thirds majority of the National Parliament, with the approval of the provincial assemblies.

78. The ordinances issued by the President of Pakistan had related to domestic legislation only and were subject to approval by the National Parliament within six months of their issue.

79. The rights of minorities were amply protected in the Constitution with the judiciary acting as a watchdog to ensure that those rights were fully protected.

80. Mrs. KSENTINI said that she attached great importance to the issue of impunity. In her view impunity should be examined from all angles and not only in the restrictive context of violations of civil and political rights. It should also be considered in relation to the denial of economic rights and of the right of peoples to self-determination and their natural resources. She looked forward with great interest to the first progress report of the Special Rapporteur on the issue.

81. Mr. GUISSE thanked members and in particular Mr. Eide, Mr. Despouy and Mrs. Ksentini, for their very important contributions. The questions asked and replies given, together with his own conclusions would be submitted to the Working Group at the next session of the Sub-Commission with a view to enhancing further the work which had already been accomplished.

82. He also wished to thank non-governmental organizations which had demonstrated their interest by, for example, indicating points which should be investigated further. He would pay great attention to their recommendations and hoped that their collaboration would continue in the interests of the continuing enhancement of the work.

83. Mr. DESPOUY said that in his next report he would be able to take account of all the valuable comments and suggestions which had been made. He wished in particular to thank Mr. Sachar for his comments on the application of internal standards concerning states of emergency in India and the important role of the Supreme Court in matters relating to the preservation of recourse such as habeas corpus. In that connection he would be interested to learn the

practice in regard to habeas corpus and similar remedies in other countries and invited colleagues to provide information, particularly on the issue of the retention of habeas corpus in states of exception.

84. Mr. Khalil had commented on legislation in force in the occupied territories which was in fact emergency legislation. Additional input would be required to do justice to such a complex problem. He had sent such information as he had to the Government of Israel but its reply had been inadequate and had been insufficient to enable him to make a special report on the issue. He hoped however to fill that lacuna in the fulfilment of his mandate in the future.

85. In reply to the comments of Mr. Boutkevitch, he said that he would welcome as much information as possible on internal legislation and mechanisms in situations of exception in the Republics of the former Soviet Union. He had noted a degree of legal uncertainty in the reports of those Republics. He invited Mr. Boutkevitch to cooperate with him in an in-depth study on the specific theme of states of emergency, applicable legislation and situations of fact in the former Republics as such a study would be extremely valuable for his report.

86. The views of Mrs. Fererro Ucros on the state of emergency in Colombia had been of great interest as they concerned a country which had existed in a state of emergency for a long time past and described the efforts of a democratic Government to establish legislation consistent with international standards on respect for human rights as reflected in the new Constitution.

87. He also wished to thank the observer for Ethiopia for his cooperation; all the information provided would be included in his next report.

88. In conclusion he wished to thank all those non-governmental organizations which had cooperated and, in particular, Amnesty International, for their provision of critical input.

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS (agenda item 7)

(a) THE ROLE AND EQUAL PARTICIPATION OF WOMEN IN DEVELOPMENT (E/CN.4/Sub.2/1992/41)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 8) (E/CN.4/Sub.2/1992/15, 16, 41, 44 and 50; E/CN.4/Sub.2/1991/17; E/CN.4/Sub.2/1992/NGO/2, 3, 5, 7, 15 and 33)

89. Mr. CISSE (Centre for Human Rights), introducing items 7 and 8, said that item 7 had been included in the agenda of the Sub-Commission since September 1978. By its resolution 1985/34, the Sub-Commission had decided to examine the item every two years but subsequently, by its resolution 1989/1, it had decided to revert to an annual examination of the question. Item 7 also included a sub-item, first proposed at its thirty-seventh session in 1984, relating to the role and equal participation of women in development.

90. At the current session, the Sub-Commission would have before it the most recent reports of the Committee on the Elimination of Discrimination against Women and of the Commission on the Status of Women in accordance with the request contained in its resolution 1987/26.

91. In response to the request of the Commission on Human Rights in its resolution 1987/19, and with the agreement of the Commission and the Economic and Social Council, the Sub-Commission at its fortieth session had decided to instruct Mr. Türk to study the problems, policies and progressive measures relating to the more effective realization of economic, social and cultural rights. During its forty-second and forty-third sessions, the Sub-Commission had taken note of and approved the first and second progress reports of the Special Rapporteur. At the current session, the Sub-Commission would have before it the final report of the Special Rapporteur (E/CN.4/Sub.2/1992/16)

92. The Sub-Commission would also have before it a working paper on the right to adequate housing prepared by Mr. Sachar (E/CN.4/Sub.2/1992/15).

93. By its resolution 1990/17, the Sub-Commission had decided to consider the human rights dimensions of population transfer and, at its forty-third session, by its resolution 1991/28, had recognized that population transfer affected the basic human rights and freedoms of the peoples concerned, including the original inhabitants, the people removed and the settlers, and had decided to include the question in its future work programme with a view to considering further effective action on the matter, taking into account the working paper submitted by Mrs. Mbonu (E/CN.4/Sub.2/1991/47) and other revelant materials.

94. Commission resolution 1990/15 had reaffirmed that extreme poverty and exclusion from society constituted violations of human dignity and that urgent national and international action was therefore required to eliminate them and had requested the Sub-Commission to examine the question in greater depth and to carry out a specific study of the issue. By its decision 1990/119, the Sub-Commission had decided to request Mr. Suescún Monroy to prepare the method and plan of work for the study on human rights and extreme poverty. The Commission, at its forty-eighth session, by its resolution 1992/11, had requested the Sub-Commission to undertake a study on the question of extreme poverty and to accord priority in its work to that issue and to report to the Commission at its forty-ninth session.

95. In that connection the Sub-Commission had before it a note by the Secretary-General (E/CN.4/Sub.2/1992/50) containing a contribution to that study by the International Movement ATD Fourth World. The Sub-Commission also had before it a working document prepared by Mrs. Palley on the same issue (E/CN.4/Sub.2/1992/WP.1).

96. He would also like to invite the attention of the Sub-Commission to Commission on Human Rights resolutions 1992/9, 1992/12, 1992/13 and 1992/21 relating to agenda item 8.

The meeting rose at 8.30 p.m.